

U.S. Issues Conflicting Statements On Using Spy Case Wiretap Evidence

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By Bill McAllister
and Christopher Dickey
Washington Post Staff Writers

The Justice Department gave conflicting statements yesterday on whether the government plans to use any of the massive evidence that the FBI gathered through an electronic surveillance scheme that President Carter authorized against two espionage suspects.

The first suggestion that the government would not use the evidence came in a three-page memorandum filed in U.S. District Court in Alexandria on the eve of a hearing into Carter's role in approving the surveillance without court approval.

But hours later, a high Justice Department official said that the memo had been filed without the approval of Attorney General Griffin Bell. Bell met late yesterday with prosecutors in the case and told them to argue that the surveillance is legal and admissible, as court evidence.

However, the official would not say whether the government will in fact use any of its electronically obtained evidence against Ronald Louis Humphrey or David Truong when the two men go on trial next month on charges of spying for Communist Vietnam.

Carter personally approved of secret television surveillance of Humphrey, who worked in the U.S. Information Agency's tightly guarded operations center in Washington. The president also authorized the FBI to tap the private telephone and place a listening device in the apartment of Truong, a Vietnamese national whose father once ran for president of the Southeast Asian country before it fell to the Communists.

The extent of the surveillance of both men has angered spokesmen for some civil liberties groups and defense lawyers had planned to make the case a test of the president's powers to conduct such surveillance without court approval.

Justice Department officials had said earlier that the case would provide an important test of the president's powers to act in espionage cases. In the memo filed in Alexandria yesterday, the government gave no

hint as to why it might reverse its plans to use any of the products of that surveillance in court.

Defense lawyers yesterday were taken aback by the government's memo announcing that the evidence would not be used in the case. "We are shocked that the government is not going to use any of this evidence," said Warren L. Miller, a lawyer for Humphrey, the first USIA employee accused of spying.

"It appears that the government recognizes the validity of our contention . . . that the electronic surveillance of Mr. Humphrey and his codefendant were patently unlawful and illegal," Miller asserted. ". . . Maybe Carter has taken control of the situation and agreed he doesn't have rights even the king of England

doesn't have," said Marvin D. Miller of Alexandria, who represents Truong.

The defense lawyers said yesterday that they still plan to challenge the government's surveillance of Humphrey and Truong. In court briefs, they contend that much of the government's evidence against the two men is the direct result of the surveillance and, as such, is "tainted," as Warren Miller put it.

The surveillance used by the FBI in the case has stirred strong interest in Congress where a Senate committee is reworking laws on the president's rights to act in such cases. The issue has also arisen in a confirmation hearing into the nomination of Assistant Attorney General Benjamin Civiletti to become Bell's deputy.